

By: Carona
(Guillen)

S.B. No. 617

Substitute the following for S.B. No. 617:

By: Guillen

C.S.S.B. No. 617

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of energy efficiency professionals;
providing penalties; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 8, Occupations Code, is amended by adding
Chapter 1307 to read as follows:

CHAPTER 1307. ENERGY EFFICIENCY PROFESSIONALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1307.001. SHORT TITLE. This chapter may be cited as
the Energy Efficiency Professionals Act.

Sec. 1307.002. DEFINITIONS. In this chapter:

(1) "ACCA" means the Air Conditioning Contractors of
America.

(2) "Commission" means the Texas Commission of
Licensing and Regulation.

(3) "Covered premises" means a new home, existing
home, or light commercial building.

(4) "Department" means the Texas Department of
Licensing and Regulation.

(5) "Direct, on-site supervision" means supervision
by an energy efficiency professional who is physically present on
the premises where the work is performed at the time the work is
performed.

(6) "Energy efficiency evaluation" means an analysis,

1 assessment, or audit of the energy consumption and efficiency of a
2 building.

3 (7) "Energy efficiency evaluation training or
4 certification program" means a program accredited by a state or
5 national organization that trains or certifies individuals to
6 perform energy efficiency evaluations for covered premises.

7 (8) "Energy efficiency professional" means an
8 individual who is registered with the department under this
9 chapter.

10 (9) "Energy efficiency report" means a report or any
11 recommendations provided to a consumer or building owner based on
12 an energy efficiency evaluation.

13 (10) "Environmental air conditioning" has the meaning
14 assigned by Section 1302.002.

15 (11) "Executive director" means the executive
16 director of the department.

17 (12) "Existing home" means a residential building that
18 was built for the purpose of housing an individual and is occupied
19 or has been previously occupied.

20 (13) "HVAC system" means a building's heating,
21 ventilation, and air conditioning system.

22 (14) "HVAC system design training program" means a
23 program accredited by a state or national organization that trains
24 individuals with regard to or certifies that individuals have the
25 skills necessary for:

26 (A) application of the material covered by the
27 ACCA manuals B, D, H, J, N, S, and T, as those manuals existed on

September 1, 2013, and the ACCA Standard 9, as that standard existed on September 1, 2013; and

(B) making HVAC system design recommendations for covered premises.

(15) "Light commercial building" means a commercial building that:

(A) is three stories or less in height; and

(B) uses an HVAC system with a unit having a size of five tons or 60,000 British thermal units per hour or less.

(16) "New home" means a residential building that was built for the purpose of housing an individual and is not occupied and has not been previously occupied.

(17) "Performance testing" means the physical testing methodologies used in diagnosing or determining the conditions of a building, including the following as prescribed by commission rule:

(A) the use of a blower door or duct leakage testing device;

(B) duct system leakage, air flow, and balance;

(C) humidity readings;

(D) static pressures;

(E) thermal imaging;

(F) supply and return temperature;

(G) combustion safety; and

(H) noninvasive refrigerant pressure readings.

(18) "Process cooling or heating" has the meaning assigned by Section 1302.002.

Sec. 1307.003. APPLICABILITY. (a) This chapter applies

1 to:

2 (1) an energy efficiency evaluation performed on a
3 covered premises;

4 (2) an energy efficiency report based on an energy
5 efficiency evaluation described by Subdivision (1); and

6 (3) a recommendation made as a result of an energy
7 efficiency evaluation.

8 (b) A registered energy efficiency professional who
9 performs an energy efficiency evaluation and produces an energy
10 efficiency report or provides HVAC system design recommendations is
11 not engaged in air conditioning and refrigeration contracting as
12 defined by Section 1302.002.

13 Sec. 1307.004. EXEMPTIONS. (a) This chapter does not apply
14 to an individual who is licensed or registered under Chapter 1302
15 and who performs an energy efficiency evaluation, provides an
16 energy efficiency report, or provides an HVAC system design
17 recommendation within the scope of the individual's license or
18 registration.

19 (b) This chapter does not apply to an individual who
20 performs an energy efficiency evaluation, provides an energy
21 efficiency report, or provides an HVAC system design recommendation
22 and who is licensed as or who is employed by an individual who is
23 licensed as:

24 (1) an engineer under Chapter 1001; or

25 (2) an architect under Chapter 1051.

26 (c) This chapter does not apply to an individual who is
27 employed by an electric utility, power generation company, retail

1 electric provider, electric cooperative, or municipally owned
2 utility and who performs an energy efficiency evaluation related to
3 or in connection with the business in which the individual is
4 employed.

5 (d) This chapter does not apply to an individual who is
6 employed by a utility program management firm for the purpose of
7 performing program quality assurance and who performs an energy
8 efficiency evaluation related to or in connection with the business
9 in which the individual is employed.

10 (e) This chapter does not apply to a building code
11 compliance inspector who reviews or inspects a building for
12 building code compliance in the scope of the individual's
13 employment or contract while employed by or under contract with a
14 local governmental entity or building contractor.

15 (f) An individual is not required to be registered under
16 this chapter if the individual is working under the direct, on-site
17 supervision of an energy efficiency professional.

18 (g) An exemption under this section does not exempt an
19 individual from complying with the requirements of Chapter 1302.

20 (h) An individual who is otherwise exempt under this section
21 and who performs or offers to perform an energy efficiency
22 evaluation, provides an energy efficiency report, or provides HVAC
23 system design recommendations for the public outside the scope of
24 the applicable exemption under this section is required to obtain a
25 registration under this chapter.

26 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

27 Sec. 1307.051. RULES. The commission shall adopt rules

1 providing for:

2 (1) the requirements for registration, registration
3 renewal, and reinstatement of a registration issued under this
4 chapter;

5 (2) the requirements for obtaining and renewing
6 endorsements on a registration issued under this chapter;

7 (3) the standards of conduct for an energy efficiency
8 professional;

9 (4) the criteria for recognizing an energy efficiency
10 evaluation training and certification program;

11 (5) the criteria for recognizing HVAC system design
12 training programs;

13 (6) the applicable standards for:

14 (A) conducting energy efficiency evaluations;

15 (B) providing energy efficiency reports; and

16 (C) providing HVAC design recommendations;

17 (7) fees reasonable and necessary to administer this
18 chapter; and

19 (8) other rules necessary for the implementation and
20 administration of this chapter.

21 Sec. 1307.052. INSURANCE REQUIREMENTS. (a) The commission
22 by rule shall establish minimum general liability insurance
23 requirements for an energy efficiency professional.

24 (b) An energy efficiency professional must maintain
25 insurance as prescribed by commission rule during the entire term
26 of the person's registration.

27 (c) The general liability insurance required by this

1 section must be obtained from an insurer authorized to engage in the
2 business of insurance in this state or from an eligible surplus
3 lines insurer, as defined by Section 981.002, Insurance Code.

4 Sec. 1307.053. LIST OF RECOGNIZED PROGRAMS. The department
5 shall maintain and make available to the public a list of:

6 (1) energy efficiency evaluation training or
7 certification programs recognized by the department; and

8 (2) HVAC system design training programs recognized by
9 the department.

10 Sec. 1307.054. LIST OF ENERGY EFFICIENCY PROFESSIONALS.
11 The department shall maintain and make available to the public a
12 directory of all individuals registered under this chapter.

13 Sec. 1307.055. CRIMINAL BACKGROUND CHECKS. The department
14 may, as permitted by law:

15 (1) examine any criminal conviction, guilty plea, or
16 deferred adjudication of an applicant for the issuance or renewal
17 of a registration issued under this chapter; and

18 (2) obtain any criminal history record information of
19 the applicant.

20 SUBCHAPTER C. REGISTRATION

21 Sec. 1307.101. REGISTRATION REQUIRED. An individual may
22 not perform or offer to perform an energy efficiency evaluation,
23 provide an energy efficiency report, or provide a recommendation
24 regarding HVAC system design on covered premises unless the
25 individual is registered by the department as an energy efficiency
26 professional.

27 Sec. 1307.102. QUALIFICATIONS; TERM OF REGISTRATION. (a)

1 The department shall register an applicant who:

2 (1) holds an appropriate certification from an energy
3 efficiency evaluation training or certification program recognized
4 by the department;

5 (2) performs at least five energy efficiency
6 evaluations:

7 (A) as part of the recognized training or
8 certification program under Subdivision (1); or

9 (B) under the direct, on-site supervision of an
10 energy efficiency professional;

11 (3) demonstrates proof of insurance as required by
12 commission rule;

13 (4) submits the application and fees required by the
14 commission; and

15 (5) passes a criminal history record information
16 check.

17 (b) The department may credit toward the requirement of
18 Subsection (a)(2) an applicant's verified experience in performing
19 energy efficiency evaluations earned while working in another
20 jurisdiction, during military training or service, or through other
21 experience as determined by the executive director.

22 (c) A registration issued under this chapter expires on the
23 first anniversary of the date the registration was issued.

24 (d) An energy efficiency professional shall maintain the
25 certification described by Subsection (a)(1) in good standing in
26 order to retain a registration issued under this chapter.

27 Sec. 1307.103. ENDORSEMENT REQUIRED. An energy efficiency

1 professional may not perform an energy efficiency evaluation,
2 provide an energy efficiency report, or provide recommendations for
3 a type of covered premises for which the registration holder does
4 not hold an endorsement.

5 Sec. 1307.104. PREMISES ENDORSEMENTS. (a) The department
6 may issue a premises endorsement to a registration issued under
7 this chapter based on a certification that satisfies the
8 requirement of Section 1307.102(a)(1).

9 (b) A registration must be endorsed with one or more of the
10 following premises endorsements:

11 (1) new home;

12 (2) existing home; or

13 (3) light commercial building.

14 (c) The premises endorsement allows the holder to perform an
15 energy efficiency evaluation or provide an energy efficiency report
16 for the type of covered premises listed on the endorsement.

17 Sec. 1307.105. HVAC SYSTEM DESIGN ENDORSEMENT. The HVAC
18 system design endorsement allows the holder to provide
19 recommendations regarding the HVAC system design of covered
20 premises. The department may issue an HVAC system design
21 endorsement to a registration holder if the holder:

22 (1) satisfies the requirement of Section
23 1307.102(a)(1);

24 (2) provides proof that the applicant has successfully
25 completed at least 60 hours of training from an HVAC design training
26 program recognized by the department; and

27 (3) has been issued a premises endorsement under

1 Section 1307.104(b).

2 Sec. 1307.106. RENEWAL OF REGISTRATION AND ENDORSEMENTS.

3 An energy efficiency professional may renew a registration or
4 endorsement issued under this chapter by completing the
5 registration and endorsement renewal requirements, including the
6 payment of a required fee, established by commission rule.

7 SUBCHAPTER D. PRACTICE OF ENERGY EFFICIENCY PROFESSIONALS

8 Sec. 1307.151. SCOPE OF PRACTICE. (a) An energy efficiency
9 professional shall conduct an energy efficiency evaluation for a
10 covered premises consistent with the scope of the energy efficiency
11 professional's registration and endorsements and the applicable
12 standards for performing energy efficiency evaluations.

13 (b) An energy efficiency professional shall provide an
14 energy efficiency report to a consumer based on the information
15 discovered in an energy efficiency evaluation and consistent with
16 the energy efficiency professional's registration and
17 endorsements.

18 (c) An energy efficiency professional shall provide
19 recommendations regarding HVAC system design consistent with the
20 energy efficiency professional's registration and endorsements and
21 based on the ACCA manuals, as applicable.

22 Sec. 1307.152. CONDUCTING ENERGY EFFICIENCY EVALUATIONS.

23 (a) An energy efficiency evaluation may include the inspection,
24 testing, investigation, or surveying of a building to evaluate,
25 measure, or quantify the building's energy consumption and
26 efficiency, including:

27 (1) verification of the building's HVAC system;

1 (2) inspection of the integrity of the building
2 envelope, including air leakage, durability, and insulation;

3 (3) inspection and evaluation of the efficiency of the
4 building's lighting, electronics, and appliances; and

5 (4) performance testing.

6 (b) The following are the minimum standards applicable to an
7 energy efficiency evaluation:

8 (1) the International Energy Conservation Code, as
9 adopted by the International Code Council and the State Energy
10 Conservation Office under Section 388.003, Health and Safety Code;

11 (2) the International Residential Code, Chapter 11,
12 for One- and Two-Family Dwellings, as adopted by the International
13 Code Council and the State Energy Conservation Office under Section
14 388.003, Health and Safety Code;

15 (3) the Residential Energy Services Network Mortgage
16 Industry National Home Energy Rating Systems Standards, Chapters 3,
17 6, 7, 8, 9, and 10, as those chapters existed on September 1, 2013;

18 (4) ACCA Standards 5, 9, and 12, as those standards
19 existed on September 1, 2013;

20 (5) the residential environmental air conditioning
21 system design standards under ACCA manuals B, D, H, J, N, S, and T,
22 as those standards existed on September 1, 2013;

23 (6) the Texas Home Energy Rating Organization's Texas
24 Home Energy Audit Technical Standard, as that standard existed on
25 September 1, 2013;

26 (7) the Building Performance Institute, Inc., Home
27 Energy Auditing Standard, as that standard existed on September 1,

1 2013; and

2 (8) the American Society of Heating, Refrigerating,
3 and Air Conditioning Engineers Procedures for Commercial Building
4 Energy Audits Levels I and II, as those procedures existed on
5 September 1, 2013.

6 (c) The commission by rule may review and adopt any
7 subsequent revisions or replacements to the standards under
8 Subsection (b) if the commission determines that adoption of the
9 revision or replacement is in the best interest of the public
10 health, safety, or welfare.

11 (d) The commission by rule may review and adopt any other
12 standards for performing energy efficiency evaluations for covered
13 premises if the commission determines that adoption of the standard
14 is in the best interest of the public health, safety, or welfare.

15 (e) The commission by rule shall identify whether the
16 standards under this section are applicable to new homes, existing
17 homes, or light commercial buildings.

18 Sec. 1307.153. ACCESS TO ELECTRICAL PANELS. (a) An energy
19 efficiency professional may open electrical panels and connect
20 temporary measurement or monitoring devices as needed in order to
21 test efficiency and capacity.

22 (b) An energy efficiency professional shall make an
23 electrical connection described by Subsection (a) in accordance
24 with standards at least as stringent as the National Electrical
25 Code as adopted under Chapter 1305.

26 Sec. 1307.154. FLUE GAS PIPE TESTING. An energy efficiency
27 professional may test flue gas piping for environmental air

1 conditioning, commercial refrigeration, or process cooling or
2 heating systems for flue gas concentration, spillage, and draft in
3 accordance with standards adopted under this chapter.

4 Sec. 1307.155. REQUIRED DISCLOSURES. (a) An energy
5 efficiency report that contains a recommendation regarding an HVAC
6 system must contain the following disclosure in at least 12-point
7 type: "Final HVAC system design and installation must be performed
8 by a licensed air conditioning and refrigeration contractor in
9 accordance with Chapter 1302, Texas Occupations Code. Design
10 recommendations may vary depending on the equipment manufacturer,
11 final designer, and design layout."

12 (b) An energy efficiency report that includes
13 recommendations for repairs, modifications, or other improvements
14 in which the energy efficiency professional or an individual
15 associated with the energy efficiency professional has a financial
16 interest must include the following disclosure in at least 12-point
17 type: "Recommendations in this report are made by an energy
18 efficiency professional with a potential financial interest in the
19 installation, repair, or general construction of energy efficiency
20 improvement measures contained in this report."

21 SUBCHAPTER E. ENFORCEMENT

22 Sec. 1307.201. PROHIBITED PRACTICES. An individual
23 registered under this chapter may not perform, offer to perform, or
24 attempt to perform an act that is:

25 (1) defined as the practice of engineering under
26 Chapter 1001, unless the individual holds a license under that
27 chapter; or

1 (2) defined as the practice of architecture under
2 Chapter 1051, unless the individual holds a license under that
3 chapter.

4 Sec. 1307.202. DISCIPLINARY ACTION. A person is subject to
5 any disciplinary action that may be imposed on a license holder
6 under Subchapter G, Chapter 51, if the person:

7 (1) violates this chapter or a rule adopted under this
8 chapter; or

9 (2) obtains a registration by fraud or false
10 representation.

11 Sec. 1307.203. ADMINISTRATIVE SANCTIONS. The commission or
12 executive director may impose a sanction under Subchapter G,
13 Chapter 51, on a registration holder if the individual violates
14 this chapter, a rule adopted under this chapter, or an order of the
15 commission or executive director.

16 Sec. 1307.204. ADMINISTRATIVE PENALTY. The commission or
17 executive director may impose an administrative penalty in the
18 manner provided by Subchapter F, Chapter 51, on a person if the
19 person violates:

20 (1) this chapter or a rule adopted under this chapter;
21 or

22 (2) an order of the commission or executive director.

23 Sec. 1307.205. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION.

24 (a) The executive director may issue a cease and desist order if
25 the executive director determines that an order is necessary to:

26 (1) prevent a violation of this chapter or a rule
27 adopted under this chapter; or

1 (2) protect the public health and safety.

2 (b) The attorney general or the executive director may
3 institute an action for an injunction or a civil penalty as provided
4 by Section 51.352.

5 SUBCHAPTER F. INITIAL REGISTRATION

6 Sec. 1307.251. INITIAL REGISTRATION. The department shall
7 issue a registration as an energy efficiency professional to a
8 qualified applicant who:

9 (1) submits an application to the department not later
10 than September 1, 2014;

11 (2) submits evidence satisfactory to the department
12 that the applicant has been actively engaged in performing energy
13 efficiency evaluations for at least 36 months; and

14 (3) complies with the registration requirements under
15 Section 1307.102, other than Section 1307.102(a)(2).

16 Sec. 1307.252. ENDORSEMENT OF INITIAL REGISTRATION. (a)
17 The department shall issue an appropriate endorsement for a
18 specific covered premises to an individual holding a registration
19 issued under this subchapter.

20 (b) The commission shall adopt rules to determine which
21 endorsement an individual holding a registration issued under this
22 subchapter shall be issued based on the certification and training
23 of the registration holder.

24 Sec. 1307.253. TERM. A registration issued under this
25 subchapter expires on the first anniversary of the date the
26 registration was issued.

27 Sec. 1307.254. REQUIREMENT TO MAINTAIN CERTIFICATION. An

1 energy efficiency professional shall maintain the certification
2 required by Section 1307.102(a)(1) in good standing in order to
3 retain a registration issued under this subchapter.

4 Sec. 1307.255. EXPIRATION OF SUBCHAPTER. This subchapter
5 expires January 1, 2015.

6 SECTION 2. Not later than March 1, 2014, the Texas
7 Commission of Licensing and Regulation shall adopt rules required
8 by Chapter 1307, Occupations Code, as added by this Act.

9 SECTION 3. (a) Except as provided by Subsection (b) of this
10 section, this Act takes effect September 1, 2013.

11 (b) Section 1307.101 and Subchapters D and E, Chapter 1307,
12 Occupations Code, as added by this Act, take effect September 1,
13 2014.